

**\*E-FILED: August 27, 2013\***

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PACIFIC METRO, LLC and THE  
THOMAS KINKADE COMPANY, LLC fka  
MEDIA ARTS GROUP, INC.,

Petitioners,

v.

LE INVESTMENTS, INC. and DARRELL  
TAYLOR,

Defendants.

Case No. C13-02216 HRL

**ORDER DIRECTING PETITIONERS  
TO SHOW CAUSE RE SUBJECT  
MATTER JURISDICTION**

Pursuant to the Federal Arbitration Act (FAA), 9 U.S.C. § 1, et seq., petitioners filed this action for an order confirming a \$10,853.12 arbitration award issued on April 11, 2013.<sup>1</sup> Now pending before the court is the parties' stipulated request for entry of judgment based on that award. Having reviewed those papers and all other matters of record in this proceeding, the court directs petitioners to show cause why this matter should not be dismissed for lack of subject matter jurisdiction.

Under the FAA, and unless otherwise agreed by the parties, a petition to confirm, vacate, or modify an arbitration award may be made to the district court "for the district in which the award was made." 9 U.S.C. §§ 9, 10, 11. "However, the FAA does not itself confer jurisdiction on federal district courts over actions to compel arbitration or to confirm or vacate arbitration awards, nor does it create a federal cause of action giving rise to federal question jurisdiction under 28 U.S.C. § 1331." United States v. Park Place Associates, Ltd., 563 F.3d 907, 918 (9th Cir. 2009) (citations omitted). Thus, a federal court has jurisdiction to enter judgment on an arbitration award only where an independent basis for federal jurisdiction exists. Id.

<sup>1</sup> All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73.

1           Petitioners invoke this court’s diversity jurisdiction under 28 U.S.C. § 1332. Federal  
2       district courts have jurisdiction over civil actions in which the matter in controversy exceeds the  
3       sum or value of \$75,000 (exclusive of interest and costs) and is between citizens of different  
4       states. 28 U.S.C. §1332. The petition asserts that the parties are citizens of different states, but  
5       says nothing at all about the amount in controversy.

6           Caselaw suggests that the determination whether the jurisdictional amount is based on the  
7       amount in controversy in the underlying litigation, or whether it is instead based on the amount of  
8       the arbitration award, depends on whether a party seeks to re-open the arbitration proceedings. In  
9       Theis Research, Inc. v. Brown & Bain, the Ninth Circuit held that the amount at stake in the  
10      underlying litigation, not the amount of the arbitration award, is the amount in controversy for  
11      purposes of diversity jurisdiction. 400 F.3d 659 (9th Cir. 2005). In that case, the plaintiff  
12      simultaneously filed a motion to vacate an arbitration award, as well as a complaint seeking over  
13      \$200 million. Viewing plaintiff’s complaint for damages as the functional equivalent of a request  
14      to reopen the arbitration proceedings, the Ninth Circuit concluded that the required jurisdictional  
15      amount was met. In reaching its decision, the Ninth Circuit noted that circuits are split, but that its  
16      conclusion nevertheless was consistent with decisions in other circuits where parties “seeking to  
17      vacate an arbitration award also sought to reopen the arbitration.” Id. at 664. In those cases,  
18      courts looked to the amount in controversy in the underlying litigation, and not the arbitration  
19      award, as the jurisdictional amount. The Ninth Circuit further noted that its decision was also in  
20      keeping with cases where the plaintiffs simply sought to vacate the arbitration awards and did not  
21      seek additional relief---in which case, the courts looked to the arbitration award as the amount in  
22      controversy. Id. at 665.

23          Following Theis, courts have held that “[w]hen a petitioner seeks confirmation or vacatur  
24      of an award, without seeking a remand for further arbitration proceedings, the amount in  
25      controversy is the value of the award itself to the petitioner.” Hansen Bev. Co. v. DSD  
26      Distributors, No. 08cv0619, 2008 WL 5233180 at \*5 (S.D.Cal. Dec. 12, 2008) (quotations and  
27      citation omitted). See also Coffey v. Merrill Lynch, Pierce, Fenner & Smith, Inc., No. CV12-  
28      00176 PA (PJWx), 2012 WL 94545 at \*5 (C.D. Cal., Jan. 11, 2012) (same). Cf. Shannon

1 Associates LLP v. MacKay, No. C09-4184 CW, 2009 WL 4756568 at \*3 (N.D. Cal., Dec. 8,  
2 2009) (concluding that petition to confirm a \$7,000 arbitration award did not meet the required  
3 amount for diversity jurisdiction, but that petitioners' request to strike the arbitrators' \$260,000  
4 offset in damages satisfied the jurisdictional amount).

5 Here, unlike Theis, no one asks this court to reopen the arbitration proceedings. Nor does  
6 anyone ask for relief that might be deemed the functional equivalent of such a request. Petitioners  
7 (with respondents' stipulation) simply seek to have this court confirm the arbitration award that  
8 amounts to a little over \$10,000, far below the \$75,000 jurisdictional minimum.

9 Accordingly, petitioners are directed to file a response to this order, showing cause why  
10 this matter should not be dismissed for lack of subject matter jurisdiction, without prejudice to  
11 seek confirmation of the arbitration award in a proper forum. Petitioners' response shall be filed  
12 no later than **September 10, 2013** and shall not exceed 5 pages.

13 **SO ORDERED.**

14 Dated: August 27, 2013

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17 HOWARD R. LOYD  
18 UNITED STATES MAGISTRATE JUDGE  
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United States District Court  
Northern District of California

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5:13-cv-02216-HRL Notice has been electronically mailed to:

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